IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.879 of 2007

Munniammal .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The District Magistrate
   and District Collector
   Villupuram District
   Villupuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Babu
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The above writ petition is filed by the wife of the detenu, Govindan, son of Chittu Gounder, for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 21.4.2007 in C2/17352/2007 against the detenu, who is confined at Central Prison, Cuddalore, to set aside the same and to direct the respondents to produce him before this Court and to set him at liberty.

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2.1. The order of detention dated 21.4.2007 was passed on the basis of ground case in Crime No.422 of 2007 for alleged commission of offences under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 9.4.2007, when the Inspector of Police, Kallakurichi Incharge of Tirukoilur Prohibition Enforcement Wing along with his police party conducted prohibition raid at Nedumanur Village based on information received, they saw the detenu pouring arrack, taking money and giving the arrack to some person sitting before him. The detenu was arrested, the contraband was seized and a case was registered. The samples of arrack seized were sent for chemical analysis and the report of the Scientific Officer and Government Assistant Chemical Analysist, Regional Forensic Science Laboratory, Villupuram reveals that the samples contain 2.89 mg% w/v/ of Atropine per 100 ml, which is a poisonous substance.

2.2. Apart from the above, the detaining authority also took note of the three adverse cases pending against the detenu in Crime Nos.148, 790 and 929 of 2006 all on the file of the Tirukoilur Prohibition Enforcement Wing for the offences punishable under Sections 4(1)(a) and 4(1)(i) of the Tamil Nadu Prohibition Act. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. The main contention of the learned counsel for the petitioner is that even though the representation dated 27.4.2007 of the detenu was received by the detaining authority on 30.4.2007, viz., within the statutory period of twelve days, the detaining authority, without considering the said representation, has forwarded the same to the Government and such failure to exercise the power conferred on the detaining authority vitiates the detention order.

4. We heard the submissions of both sides. We have perused the materials produced before us.

5. Concededly, the detention order was passed on 21.4.2007 and a representation was made on behalf of the detenu on 27.4.2007 to the detaining authority and the same was received by it on 30.4.2007, viz., within the statutory period of twelve days. The detaining authority, instead of considering the above-said representation on its own, forwarded the same to the Government and thus failed to exercise the power conferred on it, which in our considered opinion, vitiates the order of detention.

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For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 21.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary to
the Government of Tamil Nadu
Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2. The District Magistrate
and District Collector
Villupuram District
Villupuram.

3. The Public Prosecutor
High Court, Madras.

4. The Joint Secretary to Government
Public (Law and order)
Fort Saint George,
Chennai-9.

5. The Superintendent
Central Prison, Cuddalore.

1 cc to Mr.K. Babu, Advocate,Sr. 68664

H.C.P.No.879 of 2007

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